

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.309/2023 (S.B.)

Smt. Rajani wd/o Vijay Tummalwar,
Aged about 65 yrs., Occ.- Pensioner,
R/o Uttam Nagar, Bengali Camp,
Chandrapur, Dist.- Chandrapur

... **APPLICANT**

// V E R S U S //

- 1] **The State of Maharashtra,**
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai- 32.
- 2] **The State of Maharashtra,**
Through the Secretary,
Finance Department,
Manatralaya Mumbai-32.
- 3] **The Deputy Director (Buffer),**
Tadoba-Andhari Tiger Project,
District- Chandrapur.
- 4] **The Additional Treasury Officer,**
District Treasury Office, Chandrapur,
Dist.- Chandrapur
- 5] **The Accountant General (A & E)-II,**
Pension Branch Office,
Nagpur, Dist.- Nagpur.

... **RESPONDENTS**

Shri V.R. & R.K. Borkar, Ld. counsel for the Applicant.

Shri A. M. Khadatkar, Ld. P.O. for the Respondents.

**Coram :- Hon'ble Shri Justice M. G. Giratkar,
Vice Chairman.**

Dated :- 05/03/2025.

J U D G M E N T

Heard Shri V.R. Borkar, learned counsel for the applicant and Shri A. M. Khadatkar, learned P.O. for the respondents.

2. The case of the Applicant in short is as under :-

The husband of applicant was initially appointed as Forest Guard on 03/12/1966. Thereafter, he was promoted to the post of Forester i.e. Group-C post in the Year 2000. Deceased husband of applicant came to be retired upon attaining the age of superannuation on 30/06/2006. Husband of applicant died on 30/10/2013. Respondents have issued recovery order of Rs.7,41,411/- as per order dated 28/05/2020. Applicant is wife of the deceased - Vijay Tummalar. She is getting family pension.

Applicant has approached to this Tribunal for the following reliefs:-

“7.i) That, by issue of suitable writ, order or direction, the order of recovery of amount of Rs. 7,41,411/- from pension by orders dt. 31.1.2020 & 28.5.2020 produced at Annexure- A2 & A1 respectively issued by the Respondent nos. 3 & 4 may kindly be quashed and set aside in the interest of justice.

ii) That, by issue of suitable writ, order or direction the respondents may kindly be directed to refund the recovered amount with interest as per law.

iii) That, any other relief which this Hon'ble Tribunal deems fit under the circumstances of this case be also awarded to the applicant in the interest of justice.”

3. O.A. is strongly opposed by the Respondents. It is submitted that deceased husband of applicant was working in Naxalite Area. As per the G.R. dated 06/08/2002, promotional pay was granted to the deceased husband of applicant. It was noticed by the respondents that pension was wrongly fixed by taking into account promotional pay. As per the G.R. dated 06/08/2005, promotional pay is to be paid to the employees till their actual working in the Naxalite Area. After the retirement, deceased husband of applicant was not eligible to get pension by calculating the amount of promotional pay. Therefore, respondents

have rightly issued recovery order. At last submitted that the O.A. is liable to be dismissed.

4. Heard Advocate Shri V.R. Borkar. He has pointed the Judgment of the Hon'ble Supreme Court in the case of ***State of Punjab & Ors VS. Rafiq Masih (White Washer) reported in AIR 2015 SC, 696.*** As per his submission, deceased husband of applicant was retired in the Year 2006. He died on 30/10/2013 and the recovery order was issued on 28/05/2020. Therefore, in view of Guideline No.(ii) of the Judgment of the Hon'ble Supreme Court in the case of ***Rafiq Masih (cited supra)***, recovery is not permissible. Hence, prayed to allow the Original Application. The material portion of the Judgment in the case of ***Rafiq Masih (cited supra)*** is reproduced below:-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:-

(i). Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

- (ii). *Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii). *Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv). *Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v). *In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

5. There is no dispute that deceased husband of applicant was working in the Naxalite Area. He was granted promotional pay as per the G.R. dated 06/08/2002. The conditions in the G.R. is very clear. As per the said G.R., promotional pay is to be paid to the employees working in the Naxalite Area till their actual working in the Naxalite Area. After the retirement, there is no question of actual working. Therefore, respondents have rightly re-fixed the pension of the deceased husband of applicant. The

respondents are at liberty to re-fix the pension by not taking into account the promotional pay. As per Guideline No.(ii), of the Judgment of the Hon'ble Supreme Court in the case of ***Rafiq Masih (cited supra)***, the respondents cannot recover excess amount paid to the applicant / deceased husband of applicant. Deceased husband of applicant was retired employee. He was retired in the Year 2006. He died in the year 2013. Applicant is getting family pension. Respondents have issued recovery order on 28/05/2020. Therefore, in view of the Judgment of the Hon'ble Supreme Court in the case of ***Rafiq Masih (cited supra)***, recovery is not permissible. Hence, the following order:

ORDER

- (i) O.A. is allowed;
- (ii) The impugned recovery orders dated 31/01/2020 and 28/05/2020 of Rs.7,41,411/- issued by Respondent Nos.3 and 4 are hereby quashed and set aside;
- (iii) It is made clear that respondents are at liberty to re-fix the pay / pension by not taking into account

the promotional pay as per G.R. dated 06/08/2002;

- (iv) Amount, if any, recovered by the respondent shall be refunded within a period of three months from the date of receipt of this order to the applicant;
- (v) No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman.

Dated :-05/03/2025.
PRM.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Piyush R. Mahajan.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 05/03/2025.